

**NOTICE OF PROPOSED REGULATIONS**

**California Code of Regulations  
Title 15, Crime Prevention and Corrections  
Division 3, Department of Corrections**

**NOTICE IS HEREBY GIVEN** that the Director of the Department of Corrections (CDC), pursuant to rulemaking authority granted by Penal Code (PC) Section 5058 in order to implement, interpret and make specific PC Section 5054, proposed to amend or adopt Sections 3287 in the California Code of Regulations (CCR), Title 15, Division 3 relating to clothed body searches of inmates.

**PUBLIC HEARING:**

Date and Time: August 1, 2005, 9:00am to 12:00am  
Place: Resource Agency Auditorium  
1416 Ninth Street  
Sacramento, CA 95814  
Purpose: To receive comments about this action.

**PUBLIC COMMENT PERIOD:**

The public comment period will close August 1, 2005 at 5:00 pm. Any person may submit public comments in writing (by mail, by fax, or e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916)358-2636; or by e-mail at [RPMB@executive.corr.ca.gov](mailto:RPMB@executive.corr.ca.gov) before the close of the comment period.

**CONTACT PERSON:**

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief  
Regulation and Policy Management Branch  
Department of Corrections  
P.O. Box 942883, Sacramento, CA 94283-0001  
Telephone (916) 358-1655**

In the event the contact person is unavailable, inquires should be directed to the following back-up person:

**Ann Cunningham  
Regulation Management Unit  
Telephone (916) 358-1655**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Capt. Tim Quackenbush  
Regional Administration South  
Telephone (916) 323-2812**

**LOCAL MANDATES:**

This action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Government Code Section 17561.

**FISCAL IMPACT STATEMENT:**

- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

**EFFECT ON HOUSING COSTS:**

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:**

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**EFFECT ON SMALL BUSINESSES:**

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business, because they are not affected by the internal management of state prisons.

**ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:**

The Department has determined that the proposed regulation will have no affect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

**CONSIDERATION OF ALTERNATIVES:**

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

**AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:**

The Department has prepared and will make available the text and the Initial Statement of Reasons of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, Initial Statement of Reasons, and the Notice of Proposed Action will also be made available on the Department's website <http://www.cdc.state.ca.us>.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS:**

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

**AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of inmates.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to Government Code Section 11340.

- This action amends provisions governing body inspections of clothed female inmates and clothed male inmates within the Department. California Code of Regulations, Section 3287, is being amended to afford a gender-appropriate process to accomplish body inspections of clothed inmates.
- This regulation requires that non-emergency body inspections of clothed female inmates be performed by female correctional employees. The Department asserts that minimizing cross-gender contact during routine searches of female inmates serves the legitimate penological interests of maintaining prison security, rehabilitating inmates, and reducing the potential of sexual misconduct and harassment litigation. Additionally, this regulation will continue to allow routine inspections of clothed male inmates to be performed by custody employees of either sex.
- This regulation considers privacy concerns unique to female inmates while maintaining the safety and security of the staff at the institution, and eliminates the requirement that male correctional officers perform body searches of female inmates on a routine basis. A 9<sup>th</sup> Circuit Court decision, *Jordan v. Gardner*, 986 F.2d 1521, (9<sup>th</sup> Cir. 1992), found that searches of female inmates by male officers violate a women's Eighth Amendment rights to be free from cruel and unusual punishment when the cross-gender searches of females by male officers were random, non-emergency, without suspicion and conducted on women inmates who had prior histories of abuse and would likely feel re-victimized by the intimate contact.